



TOWN CLERK

Donna M. Girouard  
Town Clerk

**TOWN OF GRAFTON**  
GRAFTON MEMORIAL MUNICIPAL CENTER  
30 PROVIDENCE ROAD  
GRAFTON, MASSACHUSETTS 01519  
(508) 839-5335 ext. 1195  
[www.grafton-ma.gov](http://www.grafton-ma.gov)  
email: [clerks@grafton-ma.gov](mailto:clerks@grafton-ma.gov)

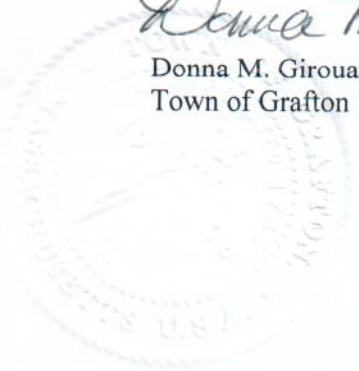


September 6, 2016

This is to certify that the newly adopted Tobacco Regulations signed by the Board of Health on August 8, 2016, and recorded in the Town Clerk's office on August 23, 2016, has passed the required 10 day review period. The new regulations will take effect on October 1, 2016.

A true copy,  
Attest:

Donna M. Girouard, Town Clerk  
Town of Grafton



**TOWN OF GRAFTON**  
**PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES**

**SECTION 1: PURPOSE**

The purpose of this regulation is to protect the health of the employees and general public in the Town of Grafton.

**SECTION 2: AUTHORITY**

This regulation is promulgated under the authority granted to the Grafton Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "Boards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

**SECTION 3: DEFINITIONS**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

**Adult-only retail tobacco store:** an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and that maintains a valid permit for the retail sale of tobacco products as required to be issued by the Grafton Board of Health.

**Bar/Lounge:** any free standing establishment which is primarily dedicated to the serving of alcoholic beverages for the consumption of guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

**Business:** any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as  
**Compensation:** money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

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**E-Cigarette:** Any product that can deliver nicotine to the user through inhalation of vapor or aerosolization. Electronic cigarette devices include any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. It does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold or prescribed solely for the approved purpose.

**Employee:** an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.



Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Grafton.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Hotels, motels, bed & breakfasts and lodging homes: A temporary dwelling as defined in G.L. Chapter 64G, Section 1.

Municipal building: any building owned, occupied or leased by the Town of Grafton.

Non-profit agency: any individual, partnership, corporation or other entity that provides goods or services on a not-for-profit basis.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Private clubs (also known as Membership Associations): a not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under Chapter 180; or (iii) an established religious place of worship or instruction in the Commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

Public places: an area that is used by or otherwise accessible by the general public.

Restaurant: any coffee shop, cafeteria, mobile food establishment, private or school cafeteria, and any other eating establishment including bar/lounge areas of dining establishments which gives or offers food for sale to the public, guests or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a "bar/lounge" as defined in these regulations.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products, including electronic cigarettes, for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco,



snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Town-owned vehicles: any vehicle owned or leased by the Town of Grafton.

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

#### **SECTION 4: SMOKING PROHIBITED**

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- (b) Smoking is hereby prohibited in Grafton in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- (c) The use of e-cigarettes is prohibited wherever smoking is prohibited pursuant to M. G. L Ch. 270, §22 and Section 4 of this regulation.
- (d) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  - (1) Public places or outdoor spaces, including but not limited to: parks, sports fields, playgrounds, town beaches, pools, Grafton Common, Super Park, town fields, or any place open for public use;
  - (2) Public school buildings, school buses, school grounds;
  - (3) Inns, Bed & Breakfasts, Hotel and Motels (including guest rooms);
  - (4) Child care facilities and child care homes;
  - (5) Taxis, public transportation, including vessels and town-owned vehicles;
  - (6) Automobile sales rooms, dealerships, repair shops, gasoline and service stations;
  - (7) Bank and automatic teller machine (ATM) lobbies;
  - (8) Clinic and other health care facilities, chiropractic, physical therapy facilities;
  - (9) Hallways and indoor stairwells accessible to the public, common areas of apartment buildings and condominiums, elevators;
  - (10) Hair and nail salons, barber shops, cosmetology establishments;
  - (11) Health and fitness centers, massage, tanning establishments;
  - (12) Indoor sports arenas, game arcades, indoor golf;
  - (13) Laundromats, public rest rooms;
  - (14) Municipal and quasi municipal building and grounds;
  - (15) Museums and galleries, places of public worship;
  - (16) Retail establishments, grocery stores, supermarkets and convenience stores, restaurants, bars and lounges, adult-only retail tobacco stores, video rental stores;
  - (17) Smoking bars including cigar bars and hookah bars;



- (18) Auditoriums, theaters or other facilities used for a state production, play, lecture, musical recital, or other similar performance (except where smoking is part of said performance) halls and rooms used for public meetings or gatherings, clubs; and
- (19) The area within fifteen (15) feet of an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen (15) foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.

### **SECTION 5: ENFORCEMENT**

- (a) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section shall be punished by a fine of:
1. \$100 for the first violation;
  2. \$200 for the second violation occurring within two (2) years of the date of the first offense;
  3. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (b) An individual who smokes in violation of Section 4(b) shall be subject to a civil penalty of \$100 pursuant to G. L. Ch. 270, Sec. (m)(2).
- (c) Each calendar day on which a violation occurs shall be considered a separate offense.
- (d) This regulation shall be enforced by the Board of Health and its designees.
- (e) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- (f) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- (g) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- (h) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

### **SECTION 6: SEVERABILITY**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

### **SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS**

Notwithstanding the provisions of Section 4 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

## SECTION 8: VARIANCES

The Board of Health may vary any provision of these Regulations, that are not subject to state law, with respect to any particular case, when in its opinion, (1) the enforcement thereof would do manifest injustice, and (2) the applicant has proved that the same degree of protection can be achieved without strict application of the particular provision. All variances shall be considered at a hearing by the Board of Health.

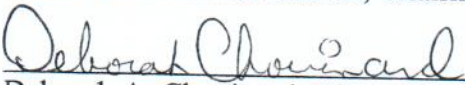
## SECTION 9: EFFECTIVE DATE

This regulation shall be effective as of <sup>October</sup> ~~September~~ 1, 2016.  
KGG 8/8/16

### **GRAFTON BOARD OF HEALTH**



Karen Gwozdowski Gauvin, Chairman

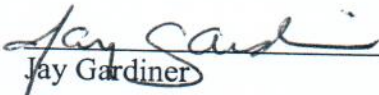


Deborah A. Chouinard, Vice Chairman

Richard J. Kirejczyk, Clerk



Philip E. Dumas



Jay Gardiner

Signed: August 8, 2016

A true copy,  
Attest:



Donna M. Girouard, Town Clerk  
Grafton, MA